

Senate Bill No. 543

Passed the Senate August 31, 2005

Secretary of the Senate

Passed the Assembly August 25, 2005

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 14666.8 of the Government Code, and to add Chapter 6.5 (commencing with Section 12899) to Part 6 of Division 6 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 543, Margett. State Water Project.

(1) Under existing law, the Department of Water Resources operates the State Water Resources Development System (State Water Project).

This bill would establish a permit program, administered by the department, for encroachments on State Water Project rights-of-way. The bill, with certain exceptions, would make any person who makes an alteration, improvement, encroachment, or excavation within the right-of-way acquired for the State Water Project, without a permit, guilty of a misdemeanor. The bill would provide for civil penalties, and, with certain exceptions, would also make it unlawful for any person to drain water, or permit water to be drained from the person's lands onto the State Water Project right-of-way, or to obstruct any natural watercourse or store or distribute water in a described manner. The bill would allow persons to continue certain authorized encroachments.

By creating new crimes, this bill would impose a state-mandated local program.

(2) Existing law authorizes the Director of General Services to enter into an agreement to lease state-owned real property to any provider of wireless telecommunications services for the location of its facilities.

This bill would require the Director of General Services to consult with the Department of Water Resources before making any state-owned real property that is part of the State Water Project available for leasing for that purpose.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The State Water Resources Development System serves a critical public infrastructure function by providing water to California's residents, businesses, farms, environment, and other users.

(b) It is vital for the Department of Water Resources to be able to protect this infrastructure from encroachments that may threaten the integrity, or interfere with the operation and maintenance, of this system.

(c) The Department of Water Resources needs the authority to control encroachments while respecting the property rights of others. However, certain encroachments that are located within the department's right-of-way may need to be removed because those encroachments threaten the integrity of the State Water Resources Development System or interfere with its operation and maintenance.

SEC. 2. Section 14666.8 of the Government Code is amended to read:

14666.8. (a) The director shall, within 120 days of the operative date of this section, compile and maintain an inventory of state-owned real property that may be available for lease to providers of wireless telecommunications services for location of wireless telecommunications facilities. This inventory shall be the state's sole inventory of state-owned real property available for this purpose. The term "state-owned real property," as used in this section, excludes property owned or managed by the Department of Transportation and property subject to Section 7901 of the Public Utilities Code.

(b) The director shall provide, in a cost-effective manner, upon payment of any applicable fee, a requesting party a copy of the inventory.

(c) On behalf of the state, the director may negotiate and enter into an agreement to lease department-managed and state-owned real property to any provider of wireless telecommunications

services for location of its facilities. A lease for this purpose shall do all of the following:

(1) Provide for fair market value to be paid by the provider of wireless telecommunications service to the state to the extent permitted under existing state law.

(2) Designate a lease term that is acceptable to the director and the state agency that has control over the property. The duration of the initial lease term for any wireless facility may not exceed 10 years, and the lease may provide for a negotiated number of renewal terms, not to exceed five years for each term.

(3) Provide for the use of the wireless provider's facilities located on the state-owned real property by any appropriate state agency if technically, legally, aesthetically, and economically feasible.

(4) Facilitate, to the greatest extent possible, agreements among providers of wireless telecommunications services for colocation of their facilities on state-owned real property.

(d) Nothing in this section alters any existing rights of telegraph or telephone corporations pursuant to Section 7901 of the Public Utilities Code.

(e) Notwithstanding any other provision of law, any revenue collected from a lease entered into pursuant to this section to use property that was acquired with money from a fund other than the General Fund shall be deposited into the fund from which the money was obtained. Money received and deposited into a fund pursuant to this section shall be available upon appropriation by the Legislature, notwithstanding any other provision of law.

(f) Before making any state-owned real property that is part of the State Water Resources Development System, as described in Section 12931 of the Water Code, available for leasing under this section, the director shall consult with the Department of Water Resources as to whether the proposed location of a wireless telecommunication facility is technically, legally, environmentally, and economically feasible for wireless telecommunication purposes.

SEC. 3. Chapter 6.5 (commencing with Section 12899) is added to Part 6 of Division 6 of the Water Code, to read:

CHAPTER 6.5. STATE WATER RESOURCES DEVELOPMENT
SYSTEM RIGHTS-OF-WAY

12899. The following definitions govern the construction of this chapter:

(a) “State Water Resources Development System” means the State Water Resources Development System as described in Section 12931, including, but not limited to, all portions of the project authorized pursuant to the Central Valley Project Act (Part 3 (commencing with Section 11100)) and additions thereto.

(b) “Encroachment” means any installation of any tower, pole, pipe, fence, building, structure, object, or improvement of any kind or character that is placed in, on, under, or over any portion of the State Water Resources Development System or other use of the department’s right-of-way, including the alteration of the ground surface elevation by more than one foot, or the planting of trees, vines, or other vegetation on the department’s right-of-way that may pose a threat to the physical integrity of any facility of the State Water Resources Development System or that could interfere with the department’s rights with regard to access, inspection, repair, or the operation and maintenance of any State Water Resources Development System facility.

(c) “Person” means any person, firm, partnership, association, corporation, other business entity, nonprofit organization, or governmental entity.

(d) “Right-of-way” means any property interest acquired by the department for State Water Resources Development System purposes, including but not limited to, an easement, license, permit, joint use agreement, or fee ownership.

12899.1. (a) Except as provided by Section 12899.8, no person shall make any alteration, improvement, encroachment, or excavation within the right-of-way acquired for the State Water Resources Development System, without first obtaining the written permission of the department.

(b) Any person proposing to make an alteration, improvement, encroachment, or excavation within the right-of-way acquired for the State Water Resources Development System shall submit an application to the department on a form prescribed by the department, along with other reports, studies, and analyses as required by the department.

(c) The department may issue a written permit, in accordance with this chapter, authorizing the permittee to do any act that is not inconsistent with the functioning, operation, maintenance, enlargement, and rehabilitation of any portion of the facilities of the State Water Resources Development System.

(d) By issuing the permits, the department is not responsible for the competence or reliability of the permittee or the encroachment.

(e) The department shall approve or deny an application for an encroachment permit not later than 60 days from the date of receipt of the complete application, as determined by the department. An application for a permit is complete when all application requirements and other statutory requirements, including, but not limited to, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), have been met. Not later than 30 days from the date on which the application is received, the department shall determine whether an application is complete. The department shall not unreasonably deny an application for a permit. If the department denies an application for a permit, it shall provide an explanation of the reason for the denial at the time of notifying the applicant of the denial.

(f) Except as provided by Section 12899.8, any person who makes an alteration, improvement, encroachment, or excavation within the right-of-way acquired for the State Water Resources Development System, without a permit, is guilty of a misdemeanor.

12899.2. (a) Any act performed under the authority of a permit issued pursuant to this chapter shall be in accordance with the applicable provisions of this chapter and the terms and conditions of the permit.

(b) The department may prescribe requirements in the permit, including a requirement that the permittee pay the entire expense of restoring the affected State Water Resources Development System facilities to a condition equivalent to that before the work was performed, and requirements relating to the location and manner in which the work shall be performed, as determined by the department to be necessary for the protection of the department's facilities.

(c) Any permit issued to a permittee shall include a provision that requires the permittee to relocate or remove the encroachment in the event the future repair, rehabilitation, or improvement of the State Water Resources Development System requires the relocation or removal of the encroachment at the sole expense of the permittee.

(d) The department shall charge an application processing and review fee for a permit to use the right-of-way.

(e) The department may inspect and supervise the work performed under any permit issued under this chapter, in which event the permittee shall pay the reasonable cost of that inspection and supervision to the department, not to exceed the amount estimated by the department at the time of issuing the permit or commencement of work. If the actual costs exceed the estimated costs, an additional fee shall be required by the department before final permit approval or at the end of the inspection. If the actual costs are less than the estimated costs, the department shall refund the difference.

(f) Before granting a permit under this chapter, the department may require any applicant to provide proof of insurance naming the department as an additional insured in an amount reasonably necessary to protect the state's interest.

(g) Before granting a permit under this chapter, the department may require any applicant, other than a county, city, city and county, or public agency that is authorized by law to establish and maintain any works or facilities within the department's right-of-way, to file with the department a satisfactory bond payable to the department in an amount that the department determines to be sufficient, conditioned on the proper compliance by the permittee with this chapter. The department may require a bond from a county, city, city and county, or public agency that, prior to submitting an application, failed to comply with this chapter or with the conditions of a previous permit.

12899.3. No corporation has any franchise rights within the department's right-of-way, and no county, city, or city and county has any right to grant a franchise within that right-of-way. This section does not apply to a State Water Resources Development System right-of-way located within city, county, or city and county public roadways.

12899.4. The department may delegate, to any entity that has a contract with the department pursuant to Section 11625, any of the department's powers, duties and authority, other than approval, under this chapter as to any facility of the State Water Resources Development System that primarily benefits that entity, and may withdraw that delegation of authority.

12899.5. (a) Except as provided by Section 12899.8, if any encroachment exists within the department's right-of-way, the department may require the removal of the encroachment in the manner provided in this section.

(b) Except as provided in subdivision (e), notice shall be given to the owner, occupant, or person in possession of the encroachment, or to any other person causing or permitting the encroachment to exist, by serving a notice including a demand for the immediate removal of the encroachment from within the right-of-way. The notice shall describe the encroachment with reasonable certainty as to its character and location. In lieu of service upon the person, service of the notice may also be made by registered mail and posting for a period of five days, a copy of the notice on the encroachment described in the notice. In the case of an owner, occupant or person in possession, who is not present in the county, the notice may be given to an agent in lieu of service by mailing and posting.

(c) The department may remove from the State Water Resources Development System any right-of-way encroachment that meets both of the following criteria:

(1) Not later than 60 days from the date on which a notice was given pursuant to subdivision (b), the owner, occupant, or person in possession of the encroachment has not asserted a right to be in possession consistent with Section 12899.8 and has not removed, or commenced to remove in a diligent manner, the encroachment.

(2) The encroachment obstructs, threatens, or prevents the proper operation, maintenance, or rehabilitation of the State Water Resources Development System.

(d) The department may immediately remove from the State Water Resources Development System any right-of-way encroachment that meets both of the following criteria:

(1) Not later than five days from the date on which a notice is given pursuant to subdivision (b), the owner, occupant, or person

in possession of the encroachment has not asserted a right to be in possession consistent with Section 12899.8 and has not removed, or commenced to remove in a diligent manner, the encroachment.

(2) The encroachment poses an imminent threat to the integrity of one or more features of the State Water Resources Development System.

(e) In the case of an emergency, the department has the authority to take any action necessary to avert, alleviate, repair, or mitigate any threat to the State Water Resources Development System. For the purposes of this chapter, “emergency” means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

(f) If the department removes any encroachment upon the failure of the owner to comply with the notice pursuant to this section, the department may recover the expense of the removal, costs and expenses of suit, including attorneys fees, and, in addition, the sum of one thousand dollars (\$1,000) for each day the encroachment remains after the expiration of the applicable response period described in subdivision (c) or (d).

(g) If the owner, occupant, or person in possession of the encroachment, or person causing or suffering the encroachment to exist, or the agent of any of these parties, disputes or denies the existence of the encroachment, asserts a right to be in possession consistent with Section 12899.8, or refuses to remove or permit the removal of the encroachment, the department may commence, in any court of competent jurisdiction, an action to abate the encroachment as a public nuisance. If judgment is recovered by the department, it may, in addition to having the encroachment adjudged a nuisance and abated, recover one thousand dollars (\$1,000) for each day the encroachment remains after the expiration of the applicable response period described in subdivision (c) or (d), and may also recover the expense of that removal, and costs and expenses of the suit, including attorney’s fees.

12899.6. (a) Unless a person is otherwise authorized, by permit or agreement, to do so, it is unlawful for any person to do any of the following acts:

(1) Drain water, or permit water to be drained, from the person's lands onto the State Water Resources Development System right-of-way by any means, which results in damage to the system or the department's right-of-way, except where the water naturally drains onto the department's right-of-way.

(2) Obstruct any natural watercourse in a manner that does any of the following:

(A) Prevents, impedes, or restricts the natural flow of waters from any portion of the department's right-of-way into and through the watercourse or State Water Resources Development System cross drainage structures, unless other adequate and proper drainage is provided.

(B) Causes waters to be impounded within the department's right-of-way that damages the State Water Resources Development System or the department's right-of-way, except where the water naturally drains onto the department's right-of-way.

(C) Causes interference with, or damages or makes hazardous the operation, maintenance, and rehabilitation of the State Water Resources Development System.

(3) Stores or distributes water for any purpose so as to permit the water to overflow onto, causing damage to, or to obstruct or damage any portion of, the State Water Resources Development System or the department's right-of-way.

(b) When notice is given by the department, in the manner provided in Section 12899.5, to any person permitting a condition to exist, as described in subdivision (a) the person shall immediately cease and discontinue the diversion of waters or shall discontinue and prevent the drainage, seepage, or overflow and shall repair, or pay for the repair, of any damage to the State Water Resources Development System or the department's right-of-way. The person to whom the notice is provided may challenge, administratively in accordance with regulations adopted pursuant to Section 12899.9, or in a court of competent jurisdiction, the propriety of the determination by the department.

(c) If any person is notified pursuant to subdivision (d) and fails, neglects, or refuses to cease and discontinue the diversion, drainage, seepage, or overflow of the waters or to make or pay for the repairs, the department may make repairs and perform

work as it determines necessary to prevent the further drainage, diversion, overflow, or seepage of the waters.

(d) The department may recover in an action at law, in any court of competent jurisdiction, the amount expended for those repairs and work, and in addition, the sum of one thousand dollars (\$1,000) for each day the drainage, diversion, overflow, or seepage of the waters is permitted to continue, after the service of the notice in the manner specified in this chapter, together with the costs and expenses, including attorneys fees, incurred in the action.

12899.7. Any person who by any means willfully or negligently injures or damages any feature of the State Water Resources Development System or the department's right-of-way is liable for necessary repairs, and the department may recover in an action at law the amount expended for the repairs, together with the costs and expenses, including attorneys fees, incurred in that action.

12899.8. (a) Notwithstanding any other provision of this chapter, and except as otherwise provided in an agreement between the department and landowner or predecessor-in-interest, any person owning a legal real property interest over a portion of the State Water Resources Development System right-of-way, or who has an agreement with the department for the construction, operation, and maintenance of an encroachment, is not required to obtain a permit from the department for exercising their property or other rights, but shall submit their plans to the department for review and comment before undertaking any additional work within the department's right-of-way. A person's legal real property or other interests shall be determined by the department upon the review of the appropriate document, agreement, or reservation of rights. The department shall respond not later than 30 days from the date of the receipt of the plans.

(b) Notwithstanding any other provision of this chapter, any holder of a current State Water Resources Development System encroachment permit on January 1, 2007, or a person who has an agreement with the department for the construction, operation, and maintenance of an encroachment as of that date, may continue the authorized encroachment pursuant to the terms, conditions, and limitations of that permit or agreement.

12899.9. The department may adopt regulations to implement this chapter, including regulations that provide for the filing of an application for a permit, related administrative review and inspection, the imposition of permit fees and permit terms and conditions, an administrative appeal process, and a process for administrative review and regulation of existing encroachments in accordance with this chapter.

12899.10. This chapter does not apply to the activities of a public agency that operates facilities of the State Water Resources Development System that are jointly owned by the state and the United States, including facilities of the San Luis Unit of the Central Valley Project, if the activities are conducted pursuant to, and consistent with, an agreement with the United States for the operation and maintenance of those facilities.

12899.11. (a) The department, not later than 60 days from the date on which it receives a complete application, shall issue a general encroachment permit, for a period not to exceed 10 years, for routine operation and maintenance activities of public agencies with a contract with the department for delivery of water pursuant to subdivision (b) of Section 12937.

(b) For the purposes of this section, “operation and maintenance” means inspection, equipment testing and maintenance, water quality monitoring and testing, weed and pest abatement, and other activities that the department determines are consistent with existing agreements between the department and its water contractors.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2005

Governor